

Docket Code: AP.PRE.REQ

PTO/SB/33 (07-05)

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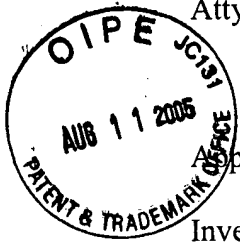
PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) D02312									
<p>I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)]</p> <p>on <u>August 8/2005</u></p> <p>Signature <u><i>Carol J. Smith</i></u></p> <p>Typed or printed name <u>Carol J. Smith</u></p>		Application Number 09/813,769	Filed 3/20/2001								
		First Named Inventor Douglas Makofka									
		Art Unit 2134	Examiner Jung, David Yook								
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p> <p>I am the</p> <table border="0"><tr><td><input type="checkbox"/> applicant/inventor.</td><td><u><i>Benjamin D. Driscoll</i></u> Signature</td></tr><tr><td><input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)</td><td><u>Benjamin D. Driscoll</u> Typed or printed name</td></tr><tr><td><input checked="" type="checkbox"/> attorney or agent of record. Registration number <u>41,571</u></td><td><u>(215) 323-1840</u> Telephone number</td></tr><tr><td><input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____</td><td><u>8/8/05</u> Date</td></tr></table> <p>NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.</p> <p><input type="checkbox"/> *Total of <u>1</u> forms are submitted.</p>				<input type="checkbox"/> applicant/inventor.	<u><i>Benjamin D. Driscoll</i></u> Signature	<input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)	<u>Benjamin D. Driscoll</u> Typed or printed name	<input checked="" type="checkbox"/> attorney or agent of record. Registration number <u>41,571</u>	<u>(215) 323-1840</u> Telephone number	<input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____	<u>8/8/05</u> Date
<input type="checkbox"/> applicant/inventor.	<u><i>Benjamin D. Driscoll</i></u> Signature										
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<input checked="" type="checkbox"/> attorney or agent of record. Registration number <u>41,571</u>	<u>(215) 323-1840</u> Telephone number										
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This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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App. No.: 09/813,769
Atty. Doc. No.: D02312

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE



Appl. No.: 09/813,760 *769*
Inventor: Douglas Makofka et al.
Filing Date: March 20, 2001
Title: Path Sealed Software Object Conditional Access Control
Examiner: Jung, David Yiuk
Art Unit: 2134
Atty. Docket No.: D02312

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Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

**PRE-APPEAL BRIEF
REQUEST FOR REVIEW**

Please enter these arguments in response to the Final Office Action mailed on
May 6, 2005 and conduct a pre-appeal brief conference.

REMARKS

In the Final Office Action mailed May 6, 2005, the Examiner rejected pending claims 1, 3-25, 31 and 32 under 35 U.S.C. 103(a) as being unpatentable over an article entitled "Securing the Nimrod Routing Architecture" by Sirois et al.

In making the rejection, the Examiner fails to address the "obtaining said information at a path sealer" recited in independent claim 1. Sirois et al. fail to teach or suggest a path sealer let alone a path sealer that obtains information. Because this element is missing from Sirois et al. and is not shown in a secondary reference, the Examiner has failed to establish a *prima facie* case of obviousness.

The Examiner asserts that the "obtaining a path to the source of said information" is taught by Sirois et al. on page 75, the first two paragraphs. These paragraphs describe the types of attacks a network may face that lead a user to experience a denial of service. Sirois et al. are concerned with providing a secure network that can survive attacks. (See page 74, column 2, first full paragraph.) The invention as claimed, on the other hand, is directed to providing secure information to a user. Nowhere in the cited passage does Sirois et al. describe a path to the source of said information. Because Sirois et al. are focusing on a different problem than that described in the application, it follows Sirois et al. do not teach or suggest this claim element.

The Examiner also asserts that Sirois et al. teach "performing a security check regarding the path ..." on page 75, last paragraph. Again, this citation does not teach what is claimed. Sirois et al. do make a broad sweeping statement about a security model but this passage fails to mention a security check regarding the path as recited in claim 1.

Finally, the Examiner fails to provide 1) any motivation for modifying Sirois and 2) any evidence demonstrating any motivation for modifying Sirois. First, the Examiner makes a conclusive statement that “[i]t is well known in the art to check paths by looking at the router for the motivation of getting information regarding path setting (because the router sets the paths).” This statement does not provide the requisite motivation. The question of why one of ordinary skill in the art would look to the router (to presumably check the path to secure information) is not answered by the Examiner’s conclusion. Because the Examiner makes a circular argument instead of providing a proper motivating statement, the Examiner has failed to meet his *prima facie* burden.

In addition, the Examiner cites to no evidence in support of this broad statement. Instead the Examiner makes a reference to what is presumably known by those of ordinary skill in the prior art. This is not evidence of the existence of proper motivation in the prior art. *In re Lee*, 277 F.3d 1338, 61 USPQ2d 1430 (Fed. Cir. 2002) (vacating and remanding a PTO Board of Patent Appeals and Interferences decision because it relied on conclusive statements of the knowledge of one of ordinary skill in the art rather than on evidence of record showing a proper motivation to combine).

The Examiner has failed to provide 1) evidence of where every element recited in the claims is taught by Sirois et al., 2) provide any motivation to modify Sirois et al. and 3) provide any evidence of where this motivation to modify Sirois et al. arises from the prior art. Therefore, the Examiner has failed to meet his *prima facie* burden in establishing a case of obviousness of the present claims in view of Sirois et al. and the rejections of the present claims should be withdrawn.

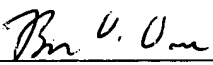
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CONCLUSION

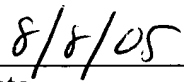
Applicant respectfully requests reconsideration of the present application in a pre-appeal conference, withdrawal of the rejections made in the last Office Action and the issuance of a Notice of Allowance.

Respectfully submitted,

Douglas Makofka et al.



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